IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

CRP.No. 2682 of 2002()

AGAINST THE ORDER DATED 12/11/2002 IN EA.211/2002 IN EP.37/1997 IN OS.125/1980 of MUNSIFF OF THALIPARAMBA.

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REVN. PETITIONER: PETITIONER/DECREE HOLDER

MADAI THIRUVARKAT KAVU DEVASWOM,
MADAI AMSOM AND DESOM, P.O.MADAI, DIST.KANNUR,
REPRESENTED BY ITS PRESENT EXECUTIIVE OFFICER.

BY ADV. SMT.VIDHYA. A.C
SRI.C.P.KUNJHIKANNAN

RESPONDENT: RESPONDENT/JUDGEMENT DEBTOR

CHAMAPARAMBIL RADHA,
W/O. NARAYANAN, MADAI AMSOM AND DESOM,
P.O.MADAI, DIST.KANNUR.

BY ADV. SRI.KALEESWARAM RAJ

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 17/01/2007, ALONG WITH CRP NO. 1607 OF 2003 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.Sasidharan Nambiar,J.

C.R.P.No.2682/02 & 1607/03

Dated this the 17th day of January, 2007

O.R.D.E.R

Petitioner Devaswom is the decree holder. Respondent is the judgment debtor. The decree in O.S.125/80 is for recovery of possession. Decree holder has to pay the value of improvements, to be determined at the time of execution. Petitioner filed E.P.40/89 for execution of the decree. A Commission was appointed. Commissioner originally fixed value of improvements at Rs.73,754.14. Executing court directed petitioner to deposit the same. It was challenged before this court by decree holder in C.R.P.1348/90. As per order dated 10.10.90, this court set aside the order of the executing court and directed executing court to determine the question afresh after permitting the parties to adduce further evidence. Before C.R.P.1348/90 was disposed, executing court had closed E.P.40/89 for the failure of decree holder

to deposit the amount as directed earlier. After the dismissal of C.R.P.1348/90 decree holder filed E.P.37/97. Along with the execution petition, decree holder deposited Rs.81,906/- being the value of improvements directed to be deposited in E.P.40/89 with interest till then. On 20.2.98 executing court fixed the value of improvements at Rs.57,844.92. Decree holder and judgment debtor challenged that order before this court in C.R.P.1352/98 and C.R.P.1235/98. This court as per common order dated 26.11.98, set aside the order of executing court and directed the court to depute a Commission to assess the value of improvements as per the Compensation for Tenants Improvements Act,1958. Advocate Santhosh was appointed as the Commissioner. He submitted Ext.C3 report. It was remitted and Commissioner submitted Ext.C4 report whereunder value was fixed at Rs.2,14,040/-. Report was again remitted back to Commissioner. Commissioner submitted another report fixing the value of improvements at Rs.1,76,577/-. Petitioner

filed E.A.19/01 to call for the assistance of PWD Engineer to estimate the value of the building. It was dismissed. Petitioner challenged that order in C.R.P.1047/01. It was dismissed in limine. There was an observation in the order of this court that respondent is entitled to value of improvements effected only upto the date of the decree. Judgment debtor filed R.P.566/02 which was allowed by this court as per the order dated 19.12.02. This court as per order held that judgment debtor is entitled to value of improvements effected even after the decree as provided under the appellate decree. Before the executing court the Executive Officer of Devaswom was examined as PW1 and Commissioner as PW2. On the side of judgment debtor, judgment debtor was examined as RW1. Executing court thereafter accepting Ext.C4 report directed decree holder to deposit Rs.1,76,577/- being the value of improvements as assessed in Ext.C4 report. The prayer of decree holder to reject Exts.C3 and C4

reports filed by Commissioner was disallowed as per order dated 19.3.03 and accepting Exts.C3 and C4 the decree holder was directed to deposit the amount on 26.5.03. Petitioner did not deposit that amount and consequently execution petition was dismissed. It is challenged in C.R.P.1607/03. When E.P.37/97 was pending decree holder filed E.A.211/02 an application for temporary injunction. It was dismissed by the executing court as per order dated 12.11.02. Challenging the said order C.R.P.2682/02 was filed.

2. Learned counsel appearing for petitioner and respondent were heard.

3. The argument of learned counsel appearing for petitioner was that executing court did not properly appreciate Exts.C3 and Ext.C4 reports and without affording opportunity to challenge the order, accepting Exts.C3 and C4 petitioner was directed to deposit the amount and on the failure to deposit the amount, execution petition was dismissed and petitioner could not prefer a

revision challenging the order accepting Exts.C3 and C4 as certified copy of the order was not furnished to petitioner. It was argued that value of improvements fixed by the executing court relying on Exts.C3 and C4 is illegal and cannot be accepted. It was also argued that the value of improvements for the coconut trees, if calculated in accordance with the guidelines provided under Compensation for Tenants Improvements Act,1958, it would only be Rs.9500/- and Commissioner estimated the value at Rs.27,000/- and therefore value of improvements is excessive. It was further argued that judgment debtor is not entitled to claim any value of improvements effected after the date of decree of the trial court and as per Exts.C3 and C4 Commissioner has valued all the improvements effected by petitioner even after the date of decree and therefore petitioner is not liable to deposit value of the same. It was also argued that Commissioner has not properly valued the value of buildings and therefore the order is

to be set aside. Reliance was placed on the decision of this Court in **Raman Ittiyathi v. Pappy Bhaskaran AIR 1990 Kerala 112)** and it was argued that defendant is not entitled to claim value of improvements effected after the date of decree.

4. Learned counsel appearing for respondent argued that in view of the order of this court in R.P.566/02, which is binding on the decree holder, petitioner is not entitled to contend that respondent is not entitled to the value of improvements effected after the date of decree. It was pointed out that, that question was specifically considered by this court in R.P.566/02 and held that respondent is entitled to the value of improvements effected even after the date of decree and being a party to the proceedings, petitioner is not entitled to ignore that order or to avoid that order and as long as that order stands, it is binding on the petitioner and therefore order of the executing court cannot be

interfered on that ground. It was also argued that Commissioner has correctly valued the improvements and there is no reason to interfere with the estimate of the value of improvements at this belated stage.

5. Though ordinarily a judgment debtor against whom a decree for recovery of possession is granted is not entitled to claim value of improvements effected after the date of decree, in view of the specific order of this court dated 19.12.02 in R.P.566/02 whereunder the very question was considered and held against petitioner, petitioner is not entitled to contend that respondent is not entitled to value of improvements effected after the date of decree. Eventhough there was a finding in the order in C.R.P.1047/01 which was dismissed in limine without hearing respondent, that decree holder is not liable to pay the value of improvements effected after the date of decree, judgment debtor filed R.P.566/02 to review that order contending that as per the appellate court

decree as well as by the conduct of the parties judgment debtor is entitled to value of improvements effected even after the date of decree. This court considered the contention and held as follows:-

> "9. It is also clear from the conduct of the parties that they have accepted the decree passed by the lower appellate court as it is and that fact is evident from the order passed by this court in C.R.P.1348/90 dated 10.10.90 preferred by the respondent against the order passed by the executing court directing the respondent to deposit the value of improvements as found by the Commissioner in Ext.C1 report. No contention is seen raised by the respondent in

the C.R.P that the review petitioner is entitled to value of improvements only upto the date of decree passed in the suit and she is not entitled to value of improvements effected after the date of the decree. The contention raised in the C.R.P was against the correctness and acceptability of the value of improvements estimated by the Commissioner in Ext.C1 report without considering the objections filed by the respondent to Ext.C1 before the executing court.

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12. The observation made by the lower court in the impugned order to the effect

> that the argument that the respondent is not entitled for value of improvements effected after the date of decree cannot be accepted since the decree shows that the respondent is entitled for value of improvements assessed on the date of delivery is to be understood subject to and in consonance with the findings of the appellate court regarding entitlement of the review petitioner herein to the value of improvements claimed in the suit."

In view of the said order which is binding on the petitioner, petitioner is not entitled to contend that respondent is not entitled to the value of improvements effected after the date of decree.

6. Then the question is whether value of improvements assessed by Commissioner and accepted by the executing court warrants any modification. Learned counsel appearing for petitioner rightly pointed out that while fixing value of improvements for the coconut trees, Commissioner has not deducted 1/4th towards droppings and 1/4th towards cultivation expenses as provided under the Compensation for Tenants Improvements Act. Therefore to that extent, estimate made by Commissioner warrants modification. If the value of improvements of coconut trees is refixed after deducting 1/4th for droppings and 1/4th towards cultivation expenses, the value of improvements would comes only Rs.9500/-. Therefore instead of Rs.27,000/- as awarded by executing court, decree holder is liable to deposit only Rs.9500/- in that head.

7. Though it was vehemently argued that value of improvements for the building is excessive, on going through the report, I find that no

modification is warranted. Decree holder is therefore liable to deposit Rs.1,76,577/- less Rs.16,500/-the excess compensation fixed for coconut trees. The decree holder is directed to deposit the said amount, less the amount already deposited within two months from today. On such deposit, executing court is directed to deliver the property. C.R.P. 1607/02 allowed to that extent. Till petitioner deposits the value of improvements, judgment debtor is entitled to be in possession of the property or deal with the property and in such circumstances, there is no illegality in the order passed by executing court dismissing E.A.211/02 warranting interference. C.R.P. No.2682/02 is therefore dismissed.

M.Sasidharan Nambiar
Judge

tpl/-

M.SASIDHARAN NAMBIAR, J.

CRL.R.P.NO. /97

ORDER

MARCH,2006